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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO. 6387 OF 2005

PETITIONER Dhaneshwar Devangan
S/o Shri Ramjee Devangan
At – R/o Panch Ward No. 07 Gram Panchayat – Katgi, Tehsil Kasdol, District – Raipur (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh Through – The Secretary, Panchayat & Social Welfare, Department D.K.S. Bhawan, Raipur
2. The Director, Panchayat & Social Welfare Department, D.K.S. Bhawan, Raipur
3. The Collector, District – Raipur (C.G.)
4. The Upper Collector, Baloda Bazar, District Raipur (C.G.)
5. Puranlal Devangan Ex. Sarpanch Gram Panchayat Katgi, Tehsil Kasdole, Distt. Raipur (C.G.)

Present : Mr. Ravish Verma, learned counsel for the petitioner.
Mr. Yashwant Singh, learned G.A., for the State/respondent.

ORAL ORDER
(Passed on 20th December, 2005)

The petitioner was elected as Panch of Gram Panchayat, Katgi village, Kasdole Tehsil, Raipur District in the year 2005. After his election as Panch, it appears that a complaint was lodged by the fifth respondent herein before the Upper Collector, Baloda Bazar, the fourth respondent herein, alleging that the fourth child of the petitioner was born on 17/02/2001and therefore, he was disqualified to be elected as a Panch of Gram Panchayat. The fourth respondent having conducted an enquiry on the said allegation by his order dated 24/11/2005 set aside the election of the petitioner as Panch on the ground that his fourth child was born on

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17/02/2001, that is to say, after the cut off date i.e. 26/01/2001. Being aggrieved by the above order, this writ petition is filed under Article 226 of the Constitution of India.

(2) At the threshold of the hearing, learned Government Advocate pointed out that the petitioner without exhausting alternative statutory remedy has approached this Court and therefore, he may be directed to first exhaust the alternative remedy and the writ petition be dismissed in limine.

(3) Having heard learned counsel for the petitioner, I do not think that it is a fit case where the Court should permit the petitioner to straightaway invoke the jurisdiction of this Court under Article 226 without exhausting alternative appeal remedy provided under sub-Section (4) of Section 36 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (*for short 'the Adhiniyam'*).

(4) At times it becomes necessary for the Court to remind itself about the self-imposed restraints and limitations in exercise of the power granted to the Court by the Constitution under Article 226. The Court can take judicial notice of the fact that large number of writ petitions are filed in this Court by persons without exhausting statutory alternative remedies or other remedies available to them. Article 226 empowers High Courts to issue directions, orders or writs in the nature of ***habeas corpus, mandamus, prohibition, quo warranto*** and ***certiorari*** or any of them. Such directions, orders or writs may be issued for the enforcement of fundamental rights or for any other purpose. It is well settled that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse relief to an

applicant in certain circumstances even though a legal right might have been infringed. Availability of an alternative remedy is one of such considerations which the High Court may take into account to refuse to exercise its jurisdiction, but, this principle does not apply to the enforcement of Fundamental Rights either under Article 32 or under 226 of the Constitution. The Supreme Court in **Mohd. Yasin vs. Town Area Committee**[1] and the cases to follow that case held that an alternative remedy is not a bar to move a writ petition in the High Court to enforce a fundamental right. This is the only exception. In all other cases where no fundamental right is involved, it has been ruled that the High Court would not exercise its jurisdiction under Article 226 when an alternative, adequate and efficacious legal remedy is available and the petitioner has not availed of the same before coming to the High Court. Of course, Article 226 is silent on this point; it does not say in so may words anything about this matter, but the Courts have themselves evolved this rule as a kind of self-imposed restriction on their jurisdiction under Article 226. The rule of exhaustion of a remedy before invoking jurisdiction under Article 226 has been characterized as a rule of policy, convenience and discretion rather than a rule of law, per decisions of the Supreme Court in **State of Uttar Pradesh vs. Md. Nooh**[2] and **Babu Ram vs. Zilla Parishad**[3]. The above rule has been justified on the ground that persons should not be encouraged to circumvent the provisions made by a statute providing for a mechanism and procedure to challenge administrative or quasi-judicial actions taken thereunder.

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1. AIR 1952 SC 115
2. AIR 1958 SC 86.
3. AIR 1969 SC 556

(5) In **Union of India vs. T.R. Varma**[4] the Supreme Court observed:

> "It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ: but..."the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs....."And when such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor."

(6) In **Thansingh vs. Supdt. Of Taxes**[5] the Supreme Court was pleased to observe:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226 where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is

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4. AIR 1957 SC 882
5. AIR 1964 SC 1419

claimed. The High Court does not, therefore, act as a Court of appeal against the decision of a Court or Tribunal to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another Tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and it will leave the party applying to it to seek resort to the machinery so set up."

(7) In **Assistant Collector of Central Excise vs. Dunlop India Limited**[6] the Supreme Court in para 3 observed:

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

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6. AIR 1985 SC 330

(8) Further, what could be gathered from the decisions of the Supreme Court in **U.P.J.N. vs. Nareshwar**[7], **T.P.M. vs. State of Orissa**[8], **H.B. Gandhi vs. Gopi Nath and Sons**[9] is that where statutory remedies are available or statutory Tribunal has been set up, a petition under Article 226 should not be entertained, unless the statutory remedies are ill-suited to meet the demands of any extraordinary situation, for example, where the very vires of the statute is in question; or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require that recourse may be had to Article 226; or where the alternative remedy is not effective or adequate; or where the alternative remedy is onerous or burdensome or inadequate; or where it involves inordinate delay or illusory in nature; where the impugned action is palpably wrong or goes to the root of the jurisdiction or where there is total lack of jurisdiction in the authority.

(9) There are certain sound reasons behind this rule. Remedies by way of Judicial review under Article 226 are fundamentally different from the other remedies. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the High Court on review under Article 226 is concerned only with the question whether the Act or order under attack should be allowed to stand or not. It is quite often stressed by the Courts that judicial review is not against a decision under attack but against the decision-making process. In **H.B. Gandhi vs. Gopi Nath and Sons** (Supra 9), in para 8, the Supreme Court observed:

> "Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the

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7. (1995) 1 SCC 21
8. AIR 1983 SC 603
9. 1992 Supp. (2) SCC 312.

correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the law. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

(10) H.W.R. Wade in his treatise on Administrative Law (6th Edition) at page 36 observes:

"The system of judicial review is radically different from the system of appeals. When hearing an appeal the Courts is concerned with the merits of the decision under appeal. When subjecting some administrative act or order to judicial review, the Court is concerned with its legality. On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful?'

(11) The other underlying object of the rule is that the High Courts are the Apex Judicial institutions in the States, and it is but natural that if an alternative suitable equally efficacious remedy is available to the party, they may refuse to exercise the extraordinary jurisdiction under Article 226 and direct the aggrieved party to first avail of the said alternative remedy before approaching the High Court. The extraordinary jurisdiction of the High Court under Article 226 cannot be reduced to an ordinary jurisdiction of the High Court. Similarly, to my mind, another object beyond the rule is to save Judge-time of the High Courts. The High Courts are charged with onerous duties of deciding the Constitutional questions, vires of the statutes and the delegated legislations and deciding

the appeals, revisions, reviews and references made to the High Courts under various statutes, and if the High Courts were to entertain the writ applications filed without exhausting the alternative statutory or common law remedies, the High Courts would not find necessary time to adjudicate upon the essential and unavoidable disputes brought before them for adjudication.

(12) In the premise of the above well settled principles, the question to be considered is whether the petitioner has made out any extraordinary ground for him to rush to this Court invoking the power of judicial review vested in this Court under Article 226 of the Constitution of India. As pointed out supra, under sub-Section (4) of Section 36 of the *Adhiniyam* the petitioner has right of appeal against the impugned order. It is needless to state that in an appeal, the appellate authority can go into the questions of fact and law. The appeal remedy is more comprehensive as well as more effective. This Court under Article 226 of the Constitution cannot go into the questions of fact or undertake resolution of the disputed facts. After hearing learned counsel for the petitioner, I do not find any sound reason which could persuade me to permit the petitioner to by-pass the statutory remedy of appeal provided under sub-Section (4) of Section 36 of the *Adhiniyam*. It is not that the exigencies of this case are such that the ordinary method of appeal may prove inadequate either in point of promptness or completeness, so that a partial or total failure of justice may result. In **Harris Vs. Barbar**[10] , it was held that when an appeal does lie, in order to quash a proceeding by *certiorari*, it is necessary that there be lack of jurisdictions appearing on the face of the record. In the

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10. 129 US 366

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circumstance, the writ petition is dismissed with no order as to costs, however, reserving liberty to the petitioner to avail of appeal remedy before the appellate authority as provided in sub-Section (4) of Section 36 of the Adhiniyam. All the contentions raised by the petitioner in this writ petition are left open to be agitated by the petitioner before the appellate authority for its decision-making.

Sd/-
Chief Justice

Brajesh*